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ABSTRACT

This report outlines the Federal Communications Commission's (FCC) regulatory authority over the licensing and operation of commercial, educational, and public broadcasting in the United States. Also described are rules and regulations governing the program content and advertising, in relation to the fairness doctrine, free speech, and public interest. The report contains a list of professional organizations and publications pertaining to radio and television broadcasting. (SC)

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The FCC and Broadcasting

Federal Communications Commission, Washington, D.C.

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THE FCC AND BROADCASTING

1(a). What the Commission Does. Congress created the Federal Communications Commission in 1934 for the purpose (among other things) of "regulating interstate and foreign commerce in communication by wire and radio so as to make available, as far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communications service. . ." Thus, the Commission regulates not only all broadcasting stations in this country, but also all interstate and foreign telephone, telegraph and cable service, communications by satellite and public safety, industrial, transportation, amateur and citizen services. The Commission regulates certain aspects of cable television (CATV) systems, although the franchising or licensing of such systems in the first instance is a matter for determination by municipalities according to local law. At present, more than 9,150 radio and television broadcasting stations are on the air, and several hundred more have been authorized. Most of these are licensed for commercial operation, and are supported by advertising revenue. However, there are approximately 860 noncommercial FM stations, 25 noncommercial educational Standard (AM) stations and about 255 noncommercial television stations operating.

The Commission does not regulate closed-circuit television operations, and, accordingly, does not control what events may be carried by closed circuit or the prices that may be charged. Furthermore, the FCC has no regulatory authority over the promoters of prize fights or other sporting events, bullfights, rodeos or other exhibitions, as such, and cannot direct them to offer or refrain from offering such events to any person or persons for exhibition, including networks or broadcast stations. Arrangements for exhibitions of this kind are the subject of private contractual agreements between the owners of the rights and other parties thereto. The Commission does not license Canadian, Mexican or other foreign stations nor does it regulate any aspect of the operation of such stations. The names and addresses of the government agencies of Canada and Mexico which regulate broadcasting in these countries are listed in Part C of the Addendum hereto. Such monitoring of broadcast stations as the Commission is able to do is directed principally to detection of technical violations, such as operation with unauthorized power or on a frequency other than the one assigned. A frequently misunderstood matter is the fact that standard transmissions cover greater distances at night, and therefore many stations in the standard (AM) broadcast band must limit their operating power at night, or cease operating altogether, to avoid interference with other stations on the same or adjacent frequencies. Licenses for daytime operation were originally sought by the applicants with the knowledge that requests for operation of full time facilities could not always be granted because of serious electrical

interference with established nighttime stations. FM and TV stations are authorized to operate unlimited hours. The Communications Act provides that the Commission "may grant construction permits and station licenses, or modifications or renewals thereof, only upon written application therefor received by it."

1(b). Licensing and Operation of Educational Stations. Under the Communications Act, the Commission licenses educational radio and television stations to provice non-profit, non-commercial broadcast services, although under a special rule FM educational stations may charge for authorized educational material transmitted by sub-carriers simultaneously with main channel programming (multiplexing), provided funds retained by the station licensees do not exceed actual costs incurred by the stations in the presentation of the program material. Educational stations may transmit educational, cultural and entertainment programs and programs designed for use by schools and school systems, but may not engage in editorializing or support or oppose any candidates for political office. Section 326 of the Act prohibits Commission censorship of broadcast matter, and the Commission does not attempt to direct either its commercial or noncommercial broadcast licensees to present or refrain from presenting specific programs.

1(c). Construction Grants and Special Funding; The Corporation for Public Broadcasting; Retention and Availability of Certain Broadcast Matter; Educational Broadcasting Organizations. The construction of noncommercial educational broadcasting facilities is assisted by matching grants of federal funds under the administration of the Department of Health, Education and Welfare, as provided in the Communications Act. In 1967, by amendment to the Act, the Congress established the Corporation for Public Broadcasting declaring "that a private corporation should be created to facilitate the development of educational radio and television broadcasting and to afford maximum protection to such broadcasting from extraneous interference and control." The CPB is a nonprofit corporation and is not an agency or establishment of the United States Government. The FCC believes it was the intent of the Congress to keep the Corporation free from government control [Communications Act, Sec. 398] and the Commission holds that it would not be warranted in attempting to oversee the Corporation's execution of its duties. CPB contributes to the growth and development of educational broadcasting by, among other things, assisting in financing programs for such broadcasting from its funds, which come from congressional appropriations and private sources. Under an amendment to the Communications Act, each licensee receiving assistance from CPB is required to retain for 60 days a recording of the sound portion of its broadcast of any program in which any issue of public importance is discussed, and during the period make a copy of such recording available to the FCC upon request and to any other person upon payment to the licensee or its designated entity the reasonable cost of making such copy. The address of CPB and the names and addresses of other organizations concerned with educational broadcasting are listed in Part D of the Addendum hereto.

The Broadcaster and Programming

2(a). Licensing of Broadcasting Facilities and Licensee Responsibilities; FCC Cannot Censor; Audience Expression. The Commission is prohibited by law from censoring broadcast matter, does not attempt to direct broadcasters in the selection or presentation of specific programming and is not the arbiter of taste. However, no application for the construction of a broadcast station (or for the licensing or renewal of licensee of the same) will be granted unless the Commission finds that the public interest, convenience and necessity will be served by such a grant. Applicants are expected to show what they have done to ascertain the problems and needs of the people in the communities to which the stations are to be licensed and other areas undertaken to be served, and what broadcast matter is proposed to meet those problems and needs as evaluated. (See Parts G(2) and G(3) of the Addendum hereto on the availability of the separate Commission ascertainment "primers" for commercial and noncommercial educational applicants.) Commercial television station licensees are also required to file with the Commission an Annual Programming Report showing the amount of time and percentage of total operating time devoted to various types of programs other than entertainment and sports. Concerned persons are urged to express their views on programming, preferably in writing, directly to stations and networks. (See Section 4 below and Part G(4) of the Addendum hereto regarding "The Public and Broadcasting--A Procedure Manual.")

2(b). Printed Matter, Films and Recordings; Audience Survey, News Gathering and Music Licensing Organizations; Certain FCC Licensing and Programming Policies Under Continuing Study; Network Formation and Affiliation. Since the Commission at times receives comments, inquiries and complaints concerning motion pictures, newspapers and other forms of printed matter, and about the manufacture and sale of phonograph recordings, it should be made clear that persons or firms engaged in motion picture production or exhibition, in publishing, or in the manufacture or distribution of recordings, as such, are not subject to regulation by the Commission, nor does the FCC assign ratings (R, X, etc.) to films. However, persons or firms engaged in these activities may hold ownership interests in licensees of broadcast stations which are subject to the provisions of law and appropriate Commission policies. The FCC has no jurisdiction over news gathering organizations, including press associations, and thus cannot direct them in servicing their publishing and broadcast licensee clients with news and comment. Similarly, the Commission cannot direct music licensing organizations, such as ASCAP, BMI and SESAC, as to their licensing procedures. The Commission has no regulatory authority over survey firms that measure the size and other characteristics of broadcast audiences although it would be concerned if broadcast station licensees were to disseminate false or deceptive information or claims regarding audiences, geographical coverage, station power or other aspects of their service. The FCC has under review its policies regarding concentration of media control, and of major TV network ownership of programs. The Commission does not attempt to direct any person to form or refrain from forming any network

nor does it direct any of its licensees to affiliate or refrain from affiliating with any network or networks. Network organizations are not licensed by the Commission except insofar as they may be owners of individual broadcast stations.

3. Public Inspection of Applications and Other Material. Each broadcasting station is required to maintain for public inspection during regular business hours in the community to which it is licensed, a "public file" with copies of most applications filed with the Commission, reports of station ownership, the FCC pamphlet, "The Public and Broadcasting--A Procedure Manual" (see Section 4 below and Part G(4) of the Addendum hereto), and certain other material. Also, commercial radio and television stations are required to retain in the file for three years, with certain exceptions, letters and other written comment from the public regarding station operation and programming efforts. Additionally, commercial television station public files must contain copies of the Annual Programming Report referred to in 2(a) above, and the public files of commercial radio and television stations must contain an annual listing of (no more than 10) problems and needs of the area served with typical and illustrative programming broadcast in response to them in the preceding twelve months. Members of the public need not make appointments to inspect the public file of a station nor are they required to examine its contents only at times most convenient to the licensee or members of his staff. Copies of all applications, as well as various other documents, also are available for public inspection in the Commission's headquarters in Washington.

Regulations governing availability for public inspection and reproduction of television program logs will be found in paragraphs 61-64 of the procedure manual and differ significantly from those covering the "public file" referred to above; e.g., such logs need not be made available for public inspection until the 46th day following broadcast. Amended rules also permit machine reproduction on request made in person of records and materials maintained locally for public inspection by television station applicants, permittees and licensees, provided the requesting party pays the reasonable cost.

4. Length of License Period and Notices of Applications; Public Comment and Participation; Procedure Manual Available. Broadcast licenses are normally granted for a three-year period, and the licenses of all stations in a given state expire at the same time. Applications for license renewal contain information regarding station programming and commercial practices, both past and proposed, and must be filed four months before date of expiration. Six months prior to the expiration date all broadcast stations begin announcing information regarding the expiration of their licenses, the availability for inspection of their applications, the dates by which members of the public should file comments with the FCC regarding station operations and the availability of further information concerning the renewal process in the station's public file or from the FCC at Washington. "The

Public and Broadcasting--A Procedure Manual" may be studied in the public files of stations or obtained from the FCC, as indicated in Part G(4) of the Addendum hereto. It contains, among other things, information helpful to community groups and members of the public generally in filing comments concerning station performance.

However, as stated in Section 2(a) above, concerned persons are urged to make their opinions known to their local stations. Every effort should be made by all parties to resolve differences at the local level. Frequently citizens will find that broadcasters welcome suggestions from members of the public as to possible ways to improve their service.

5. Non-Discrimination in Broadcast Employment. The Commission has adopted rules which provide that "equal opportunity in employment shall be afforded by all licensees or permittees of. . .standard, FM, television or international broadcast stations. . .to all qualified persons, and no person shall be discriminated against in employment because of race, color, religion, national origin or sex." In addition, Commission Rules require that broadcast licensees employing five or more persons file annual reports indicating employment in certain job categories of persons belonging to national minorities, and subdivided as to sex. Also, licensees employing ten or more persons must file information regarding affirmative equal employment programs for minorities and women. This information and the annual reports are among the documents required to be made available for public inspection (see Section 3). A publication explaining in detail procedures available to individuals who feel they themselves have been discriminated against is available upon request to the Commission branch listed in Part J of the Addendum hereto. The Commission does not attempt to direct a licensee in its selection of an individual employee or performer for a particular program or announcement.

Complaints alleging unequal pay for equal work or discrimination in employment because of age against persons between 40 and 65 years old should be filed with the nearest local Wage and Hour Office, listed in telephone directories under U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, with the request that the Broadcast Bureau of the Federal Communications Commission be advised of the Wage and Hour Office's findings in the matter.

6(a). Acceptance, Rejection, Scheduling, Cancellation and Duplication of Program Matter; Color, Stereo and Quadraphonic Broadcasting; Adherence to Published Program Schedules. The Commission is prohibited by Section 326 of the Communications Act from censoring broadcast matter and from taking any action which would interfere with the right of free speech by broadcasting. It should also be stated that the FCC is not the arbiter of taste. The licensee is responsible for the selection of programming based on what he has learned in ascertaining the problems and needs of the community to which his station is licensed. Thus, the Commission does not direct him to broadcast one program or cancel another, or as to the time of day when programs or

announcements should be presented. This policy applies to many programming matters, such as discontinuance of a particular program over a station or network or deletion of certain portions of a program for reasons of taste or propriety, to avoid offending the sensibilities of members of the audience or for other editing purposes. It is also applicable to the selection of religious programs, motion pictures and sports programs (including wrestling exhibitions and bullfights) and specific types of public service programs. Whether to present public service announcements for any specific purpose or on behalf of any particular public or private organization is a matter for determination by the individual licensee. The same policy covers decisions by networks or stations to present simultaneously the same or similar sports or news events, or other types of programs. The FCC will not substitute its judgment for that of the broadcaster in the selection and presentation of material for programs of news and comment. (See Section 12 below.) There is no regulation requiring licensees to present television programs in color or FM programs in stereo or quadraphonic when stations are equipped to broadcast such programs. Under a Commission rule, an FM station may not presently duplicate programs of a commonly owned AM station in the same local area in more than 50 percent of the average FM week if either station is licensed to a community of over 100,000 population. Under amendments to the rule, effective May 1, 1977 the duplication limit will be 25 percent and the 50 percent ceiling will apply where either station is in a community of over 25,000 but not more than 100,000 population. Further amendment, effective May 1, 1979, will extend the 25 percent duplication limit to stations in the 25,000 - 100,000 population category.

Information on how to obtain publications setting forth FCC policies regarding programming and advertising directed to children and also on the depiction of violence in television will be found in Parts G and J of the Addendum to this pamphlet.

Complaints are received that some stations do not always adhere to program schedules as published. The Commission has no authority to regulate the listing of programs in magazines and newspapers. Changes in programming plans sometimes occur after listings have been sent to the press and it may not always be possible to submit corrected listings before the deadline for changes, particularly in the case of weekly publications, such as TV Guide and supplements in Sunday newspapers. However, citizens are urged to make their views known in writing to the stations involved so that licensees will become more fully aware of the opinions of their audiences, and attempt to the best of their ability to eliminate such sources of dissatisfaction.

6(b). Access to Broadcast Facilities, Program Guests and Freedom of Speech; Advisory FCC Opinions; Submission of Program Ideas and Material. Section 3(h) of the Communications Act states that a broadcaster shall not be deemed a common carrier. He therefore is not required to accept all matter which may be offered to him for broadcast. There is no provision of the Constitution or of any statute or regulation guaranteeing to any particular person the use of a microphone or TV camera for the presentation of broadcast material and therefore, except under special circumstances, the broadcast licensee is under no obligation to have any particular person as

his guest or to present that person's remarks. 1/ Stations having agreements with networks under which they cannot reject programs will not be licensed by the FCC. It is not the Commission's policy to review material prior to its broadcast. Persons wishing to market program ideas or scripts, or to have their recordings or other material broadcast, should deal directly with producers, stations or networks, as the FCC cannot serve as a clearing house for talent or programs. We cannot direct any person or firm in procedures for disposition of material submitted to them and will not intervene in the private disputes which may arise in this regard.

6(c). Licensee Business Practices, Advertising Rates and Profit Levels. While the Commission would be concerned if any practice of a licensee might be in restraint of trade, result in unfair competition or otherwise not be in accord with law, the broadcaster, as noted above, is not a common carrier and the FCC neither requires that his advertising rates be submitted for approval nor attempts to fix his profit levels. The rates a licensee may charge a given sponsor are a matter for negotiation between the sponsor and the station. Licensees authorized to operate commercially are not required to charge or refrain from making a charge for broadcast time. Federal law and FCC rules, policies and complaint procedures governing political broadcasting, including rates charged candidates for public office, are set forth and explained in the several publications that make up the Political Broadcasting Primer. Information on how to obtain a set of this primer will be found in Part H of the Addendum to this pamphlet.

7. Fairness Doctrine; Retention of Material Broadcast. The Commission does not attempt to substitute its judgment for that of the broadcast licensee regarding "open mike" or other programs in which the editorial views of the licensee himself or the opinions of other persons are set forth. We should explain, however, that the Commission believes that licensees are obligated to give the public more than one viewpoint on a controversial issue of public importance. The Constitutionality of this policy, known as the fairness doctrine, has been upheld by the Supreme Court. The policy requires a licensee who presents one side of a controversial issue of public importance to afford reasonable opportunity for presentation of opposing viewpoints on that issue. The fairness doctrine does not require exact equality of time for opposing viewpoints, and should not be confused with the law governing use of broadcasting stations by candidates for public office. What the fairness doctrine requires is that a broadcast licensee, having presented one side of a controversial issue of public importance, make reasonable efforts to present opposing sides of the issue in his overall programming. Opposing views need not be presented on the same program or

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1/ When one qualified candidate for public office has been permitted to use a broadcasting station, Section 315 of the Communications Act requires that the station "shall afford equal opportunities to all other such candidates for that office. . ." The Commission's Rules also require that with certain exceptions a person who is the subject of a personal attack shall be afforded an opportunity to respond. A personal attack is defined as an attack "upon the honesty, character, integrity or like personal qualities of an identified person or group, which occurs during discussion of a controversial issue of public importance."

even in the same series of programs, so long as an effort is made in good faith to present contrasting views in the station's overall programming. With the exception of certain circumstances involving political editorials of licensees, personal attacks as defined by the Commission's Rules and a provision of law affecting noncommercial educational stations [see Section 1(c) above], licensees are not required to make, maintain or provide to the general public scripts, tapes or summaries of program material broadcast.

8. Other Aspects of Fairness; Editorializing and Scheduling of Editorials and News Comment; Labeling and Mingling of Program Matter. It should be stressed that the purpose of the fairness doctrine is to protect the right of the public to be informed, not to provide broadcast time to any particular person or group. Having broadcast one side of a controversial issue of public importance, the broadcast licensee has an obligation to attempt to present contrasting viewpoints, but it lies within his discretion to select the particular format to be used in such presentations as well as the particular individual to express the various viewpoints -- provided, of course, that the licensee appears to be acting reasonably and in good faith. See Part G of the Addendum hereto for the name of the Commission office to be addressed in requesting a copy of a booklet explaining the fairness doctrine in detail with examples of the way it has been applied in factual situations. Several Commission publications make up the Political Broadcasting Primer and set out and explain the so-called "equal time" law, as well as other federal legislation, together with FCC rules, policies and complaint procedures applicable to political election campaign broadcasting. A set of this primer may be obtained upon request from the Commission branch listed in Part H of the Addendum to this pamphlet. Editorializing is expression of the opinions of station licensees ("comment" is preferable when referring to expression of views by station guests or employees) and commercial licensees are encouraged to engage in it under the Commission's policies, subject to the requirements of the fairness doctrine. (Editorializing by non-commercial educational licensees is prohibited by law.) There is no law or rule requiring that editorials or news comment (or, indeed, any kind of broadcast material) be labeled or announced as such, or which requires that it be separated or distinguished in any way from other program matter.

9. Obscene, Indecent or Profane Language or Material. Complaints are received objecting to the broadcast discussion of certain subjects or to language, costuming or actions as offensive; and also to programs whose content or scheduling are deemed unsuitable for children. The broadcast of material considered by many to be "obscene" or "indecent" (see below regarding the special case of "profanity") is one of the most difficult problems facing the Commission and the courts. Since there is no short way to summarize the subject, we offer the material that follows as our best attempt to explain the present status of this complex area of law and to describe pertinent actions of the courts and the FCC.

The Commission's authority in this area is governed by federal statutes and by decisions of the courts in interpreting them. On the one hand, Section 326 of the Communications Act specifically prohibits Commission censorship

of broadcast material or interference with freedom of expression by broadcasting. There is no law or regulation that bars the broadcast discussion of a given subject. On the other hand, Section 1464 of the United States Criminal Code provides criminal penalties for uttering "any obscene, indecent or profane language by means of radio communication." ("Radio" is defined in the Communications Act so as to include television.) While criminal prosecution under this section is solely within the jurisdiction of the Department of Justice, the Commission is authorized under provisions of the Communications Act to revoke a broadcast license or impose a fine upon the licensee for violation of Section 1464 regardless of whether criminal prosecution has been initiated.

The courts have held in many cases that material that may be offensive to some people is not necessarily obscene as a matter of law. The United States Supreme Court adopted the present standard for determining whether a particular printed work is obscene in the case of Miller v. California (June 21, 1973). That standard is "(a) whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes in a patently offensive way, sexual conduct specifically defined by the applicable state law, and (c) whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value." The Court has applied the same standard to motion pictures and to violations of federal laws other than Section 1464. The Court has not specifically ruled on whether a particular work may be regulated because it is "indecent" in contrast to "obscene," although in one case concerning motion pictures, the Court has indicated that it might construe the word "indecent" as being the equivalent of "obscene" for Constitutional purposes. However, the Court has never specifically interpreted Section 1464 or any other statute with specific reference to the broadcast of questionable material, in contrast to its presentation in print or in motion pictures. The Supreme Court has ruled that nudity alone is not enough to make material legally obscene under the Miller standards.

In April of 1970 and April of 1973, Notices of Apparent Liability were issued to the licensees of Stations WUHY-FM, Philadelphia, Pennsylvania and WGLD-FM, Oak Park, Illinois, respectively, proposing to fine the stations for the broadcast of obscene and/or indecent language, but stating that the Commission would welcome court review of its actions. In each case the licensees elected to pay the fines.

In July of 1973 the Commission denied an application by the Illinois Citizens Committee for Broadcasting and the Illinois Division of the American Civil Liberties Union for remission of the $2,000 fine against the licensee of Station WGLD-FM. The two groups appealed the Commission's decision to the United States Court of Appeals for the District of Columbia Circuit, essentially urging that the Commission had erred in assessing the fine. On November 20, 1974 the Court ruled, in effect, that the FCC does not act unconstitutionally when it determines that broadcast discussions in daytime radio call-in programs of ultimate sex acts in a titillating context are obscene; but the Court in this case established no standards applicable to broadcast matter different from those presently applied to printed material

or to motion pictures. Moreover, because the Court found the material broadcast by WGLD to be obscene, it did not reach the question of the constitutionality of the Commission's interpretation and application of the term "indecent."

After inquiry into a complaint regarding certain language aired by Station WBAI(FM), New York City, the Commission on February 12, 1975 issued a declaratory Order concerning the use of indecent language on the public airwaves. The Commission defined "indecent language" as "language that describes in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities and organs." This definition differs from the definition of obscenity in that the latter also requires a showing that the material appeals to the prurient interest. The Commission further stated that at hours when it is likely that children will be in the audience, indecent language "cannot be redeemed by a claim that it has literary, artistic, political or scientific value." However, when the number of children can be expected to be at a minimum, such as late-night hours, the Commission "would also consider whether the material has serious literary, artistic, political or scientific value, as the [WBAI] licensee claims." The Commission's position has been challenged by the licensee of Station WBAI and the matter is now before the courts.

The Commission has stated a belief that it would be inequitable to hold a licensee responsible for indecent language where live coverage of public events was involved, and that under such circumstances it is trusted that a licensee would exercise judgment, responsibility and sensitivity to the community's needs, interests and tastes.

The Commission submitted its Report of the Broadcast of Violent, Indecent and Obscene Material to the Congress on February 19, 1975. For information on the availability of the report as well as a news release summarizing its contents, please see Part J of the Addendum to this publication. The report summarized discussions with representatives of the three major commercial networks with respect to reducing the "level and intensity" of violent and sexually-oriented programming. (The response of the networks was the establishment of a "Family Viewing" period during the early evening hours of network television programming). In its Report the Commission also sought from the Congress clarification of the statutory language that prohibits the broadcast of obscene and indecent language to assure the applicability of the statute to television and to cable television. In the spring of 1976 the FCC forwarded to the Congress its recommendations for specific language to achieve the clarification.

Profanity: The intention of the speaker has governed in key court cases involving language commonly regarded as profane ("Hell," "Damn," "God damn it"), the test being whether there were uttered "words importing an imprecation of divine vengeance or implying divine condemnation, so used

as to constitute a public nuisance." Complaints of such language unaccompanied by evidence of the indicated intention do not normally furnish a basis for Commission action. Persons using expressions such as here quoted seldom intend to be taken literally.

The Commission has consistently urged concerned persons to express their views in writing to the stations and networks involved in the broadcast of programming which they consider objectionable.

10. Criticism of Social Institutions and Conduct, Existing Laws and Government Actions or Officials. The courts have held that the First Amendment to the United States Constitution guarantees free speech with certain very limited exceptions. In a license renewal case in which charges of defamation had been made, the Commission stated, in part:

> It is the judgment of the Commission, as it has been the judgment of those who drafted our Constitution and of the overwhelming majority of our legislators and judges over the years, that the public interest is best served by permitting the expression of any views that do not involve [quoting from Supreme Court decisions] "a clear and present danger of serious substantive evil that rises far above public inconvenience, annoyance or unrest.". . . .this principle insures that the most diverse and opposing opinions will be expressed, many of which may be even highly offensive to those officials who thus protect the rights of others to free speech. If there is to be free speech, it must be free for speech that we abhor and hate as well as for speech that we find tolerable or congenial.

Thus, broadcasts of views opposing existing laws or criticizing social conditions, government activities or officials, including the President, are protected by the constitutional guarantees of free speech.

11. Broadcast Matter Reflecting Upon Various Characteristics Including Race, National Background, Religion or Gender. Programs containing criticism, ridicule or humor concerning the religious beliefs, race, national background, gender or other characteristics of persons or groups are sometimes the subject of complaints received by the Commission. Such broadcast material, however offensive it may sometimes be, also enjoys the protection of the First Amendment; the legal principles involved are the same as set forth in Section 10 above.

12. News Programs. The Commission sometimes receives allegations that a network, station or newscaster has distorted or suppressed news, or unduly emphasized certain aspects of the news, or has staged instigated or fabricated news occurrences. The Commission will not attempt to substitute its judgments of news values for those of a licensee, but the deliberate distortion, slanting or "staging" of news by broadcast stations would be patently inconsistent with the public interest and would call for remedial action by

the Commission. However, the Commission in order appropriately to commence action in this sensitive area must receive significant extrinsic evidence that the news was deliberately distorted or fabricated. Were this Commission to proceed upon the basis simply of what was said over the air, it would be in the position of determining the "truth" of each factual situation, evaluating the degree to which the matter complained of departed from the "truth," and, finally, calling upon the licensee to explain the deviation. The Commission believes that such activities on its part would be inappropriate for a Government licensing agency.

13. Violence and Crime in Programming; Narcotics and Dangerous Drugs. This Commission will cooperate in every feasible way with the work of government entities and other organizations studying the possible influence upon human behavior of the depiction of crime or violence in broadcast programs, and will take cognizance of any findings that may result from these studies. Publications setting forth the Commission's policy regarding programming and advertising directed to children as well as the depiction of violence in television programs are available upon request as explained in Parts G and J of the Addendum hereto.

The Commission receives complaints alleging that some broadcast material, and particularly certain songs, encourage or glorify the illegal use of narcotics or dangerous drugs. On March 5, 1971, the Commission issued a Public Notice reminding licensees of their responsibility to acquaint themselves with the nature of their programming, including lyrics of songs. Four years earlier the Commission had issued a similar reminder with reference to foreign language programs. In its Notice of March 5, 1971, the Commission did not state that a licensee should not broadcast any particular type of record, and made clear the fact that selection of records was a matter for the licensee's judgment. Because the Public Notice was widely misconstrued as a directive not to play certain kinds of records and because a number of petitions for reconsideration of the Notice were received, the Commission on April 16, 1971, issued a Memorandum Opinion and Order treating the matter in greater detail and constituting the Commission's definitive statement on the subject.

A number of government agencies, including the Departments of Justice and of Health, Education and Welfare, are cooperating with the National Association of Broadcasters and individual broadcasters in presenting material designed to acquaint young people with the dangers of narcotics.

14. Tobacco Products: Cigarette and Little Cigar Advertising; Depiction of Use of Tobacco Products in Programs. Section 6 of the Federal Cigarette Labeling and Advertising Act of 1965 (Title 15 of the United States Code, Sections 1331-1340), as amended by the Public Health Cigarette Smoking Act of 1969 and further amended by the Little Cigar Act of 1973, states: "After January 1, 1971, it shall be unlawful to advertise cigarettes and little cigars on any medium of electronic communication subject to the jurisdiction of the Federal Communications Commission." Cigarettes are defined in the

Act of 1969 and little cigars in that of 1973. The law does not prohibit the broadcast advertising of such tobacco products as pipe tobacco or cigars not defined as "little cigars" in the legislation referred to above; nor does it prohibit the incidental use of any tobacco product in television programs by actors, announcers, etc.

15. Alcoholic Beverages. The Commission has consistently taken the position that prohibition of broadcast advertising of alcoholic beverages is a matter for legislative determination by the Congress. The Congress has enacted no law in this regard. The Commission is prohibited by the Communications Act from censoring any broadcast matter and does not direct licensees to accept or reject such advertising or in the depiction of the use of alcoholic beverages in dramatic or other types of program matter. The National Association of Broadcasters' codes, which are aspects of self-regulatory activities among broadcasters, forbid the advertising of hard liquor and establish guidelines for advertising wine and beer as well as for the depiction of the use of alcoholic beverages in television programs. Membership in the NAB and subscription to its codes are entirely voluntary on the part of broadcast licensees. The Association's address is included in Part B of the Addendum hereto.

16. Other Advertising Complaints and Inquiries.

(a). Amount of Advertising. No law or rule limits the amount of commercial matter that may be aired in a given period of time. Commercial time is measured in total minutes per clock hour and not all program interruptions are necessarily commercial; public service announcements, for example, are not, nor are unsponsored time signals, routine weather announcements or, generally, program promotion announcements. Applicants for licenses or renewals thereof are required to state the maximum amount of commercial matter proposed normally to be allowed in any clock hour and under what circumstances the proposed limits might be exceeded at times and what the limits would then be. The FCC carefully considers these proposals to determine if they serve the public interest. Renewal applicants, in addition, are required to inform the Commission of the amount of commercial matter per hour actually broadcast during past license periods. Under certain circumstances, applications proposing more than 18 minutes of commercial time per hour for radio stations or 16 minutes of such time for television stations are considered initially by the full Commission itself to determine whether grants of applications containing such proposals would be in the public interest. In a policy statement adopted in April, 1976 the FCC stated that no question would be raised regarding excess of political spot announcements by radio stations over their normal commercial limits if occurring within the limitations specified in the policy.

(b). Offensive Advertising. (Nature and Scheduling of Certain Products; Indecency and Poor Taste; Inept Production and Grammatical Errors.) Complaints are received regarding the nature of certain products advertised by broadcast or objecting to the airing of announcements for such products when members of the audience are at their meals. Others are offended by advertising they believe to have been handled indecently or in poor taste. Still others

complain of commercials they believe have been ineptly produced or contain grammatical errors. Under the prohibition against censorship in the Communications Act, the Commission does not attempt to direct stations to present or refrain from presenting any particular program or announcement or in the scheduling of such material. The FCC is not the arbiter of taste and lacks authority to instruct anyone in language usage, assignment of personnel or, generally, in matters relating to artistic quality or effectiveness of presentation. The Congress, however, by the enactment of specific legislation, has provided sanctions for the broadcast of material that promotes a lottery (with the exception of state conducted lotteries), advertises cigarettes or little cigars as defined, perpetrates a fraud or may be obscene, indecent or profane. In addition, some advertisements may violate laws administered by the Federal Drug Administration, the Federal Trade Commission or other agencies with appropriate jurisdiction in this field. For further information regarding these matters please refer to Sections 9, 14 16(c), 17(d) and 17(e) herein. Viewers or listeners are urged to acquaint stations and networks directly with their opinions on advertising they find objectionable, preferably by addressing written communications to management officials. Regarding print advertising, the FCC has no jurisdiction over the publication of newspapers, magazines or other forms of printed matter.

(c). <u>False or Misleading Advertising; Food and Drug Products Advertising.</u> The Federal Trade Commission (Pennsylvania Avenue and Sixth Street, N.W., Washington, D.C. 20580) has the primary responsibility for determining whether advertising is false or deceptive and for taking appropriate action against the sponsors of such material. The FCC, however, holds broadcast licensees responsible for exercising reasonable diligence to prevent the use of their facilities for false, deceptive or misleading advertising, and takes cognizance of FTC findings in this regard. The two commissions have established liaison procedures under which they will exchange information and maintain regular staff contacts on matters of mutual concern. The FTC has been studying the role in our national life, as well as the advertising, of such products as non-prescription stimulants, calmatives and sleeping aids, and the National Association of Broadcasters has adopted guidelines for the advertising of these three classes of drug products. Complaints and inquiries regarding food or drug products believed to be dangerous or unsafe should be addressed to the Food and Drug Administration, Department of Health, Education and Welfare, 5600 Fishers Lane, Rockville, Maryland 20852.

(d). <u>Loud Commercials.</u> The Commission also receives complaints that certain broadcast advertising is objectionably loud. The Commission has made extensive inquiries into this problem and has concluded that although no method apparently has been developed whereby the objectionable quality of "loudness" can be measured objectively, many factors pertaining to loudness can be controlled by broadcasters. Accordingly, the Commission amended its rules to this end. It also issued a policy statement setting forth the various methods by which loudness can be controlled, and requested broadcast licensees to take appropriate measures to adhere to the policy. The Commission makes inquiry into each such complaint it receives if the complainant states

the call letters of the station that broadcast the commercials, describes the announcements or lists their sponsors, and specifies the date and approximate time of the broadcasts.

(e) Subliminal Advertising. The Commission receives complaints regarding the supposed use of subliminal techniques in television advertising. Such complaints usually concern words and pictures flashed briefly on the screen but of which the viewer is consciously aware. However, subliminal advertising is designed to be perceived on a subconscious level only. The FCC has held that the use of subliminal techniques is inconsistent with the obligations of a licensee and has made it clear that broadcasts employing such techniques are contrary to the public interest, adding that, whether effective or not, the broadcasts are clearly intended to be deceptive.

17. Private Controversies; Miscellaneous Claims Against Stations; Contests; Lotteries; Solicitation of Funds.

(a). Controversies and Claims. The Commission does not attempt to resolve private controversies involving broadcasting stations, and generally leaves the enforcement of individual claims to the parties involved. It cannot, for example, collect contest prizes for participants or secure delivery of merchandise ordered through broadcast stations or enforce claims against stations for payment of wages or other debts. However, it is the Commission's duty to consider practices which might reflect upon either the character or financial qualifications of a broadcast licensee or which could adversely affect the ability of the broadcast industry to serve the public interest. The Commission will consider comments, inquiries and complaints which may raise questions regarding the qualifications of licensees with the view to taking such action as may be deemed appropriate.

(b). Improperly Conducted Contests; Program Matter (Hoaxes, Scare Headlines and Certain Types of Contests and Promotions) Which Adversely Affects the Public Interest. It is a violation of law to prearrange or predetermine the outcome of any purportedly bona fide contest of intellectual knowledge, intellectual skill, or chance with the intention of deceiving the broadcast audience regarding such contest. (Section 509 of the Communications Act). The FCC also will give careful consideration to complaints that its licensees have engaged in any of the following practices in the conduct of contests: dissemination of misleading or deceptive information regarding the nature of a contest, the prizes to be awarded or the qualifications for participation by members of the public; failure to broadcast or publish complete and clear information regarding the rules for a contest, or to provide the public with full and timely information concerning a change in a contest, its premature termination or decision not to award announced prizes.

The Commission is also concerned that licensees refrain from broadcasting contests, promotions or hoaxes which may result in alarm to the public about imaginary dangers, infringement of public or private property rights

or the right of privacy, annoyance or embarrassment to innocent parties, hazards to life and health, and traffic congestion or other public disorder requiring diversion of police from other duties.

(c). Lotteries. A lottery is a game, contest or promotion which combines the three elements of (1) a prize, (2) dependence in whole or in part upon chance in determining winners, and (3) the requirement that contestants purchase anything or contribute something of value in order to compete (consideration). If any of these elements is absent, there is no lottery. Generally, Section 1304, Title 18, United States Code, prohibits the broadcast of advertisements for or information concerning lotteries [raffles, bingo, etc.]. However, the restrictions of Title 18 do not apply to an advertisement, list of prizes or other information concerning a lottery conducted by a state when such information is broadcast: (1) by a broadcast station licensed to a location in that state, or (2) by a station licensed in an adjacent state which also conducts a lottery.

(d). Solicitation of Funds. There is no law or regulation which prohibits the broadcast solicitation of funds for lawful purposes (including appeals by broadcast licensees for contributions to defray station operating expenses) if the monies or other things of value contributed are put to the announced purposes. Where use of the mails is involved in this area, enforcement of relevant law is the responsibility of the United States Postal Service. Whether to permit solicitation over his facilities is a matter within the discretion of the individual licensee. Section 1343 of Title 18, United States Code, provides criminal penalties for fraud by wire, radio or television.

ADDENDUM - 1

A. The addresses of the major commercial communications networks are as follows:

1. American Broadcasting Companies, Inc.
   1330 Avenue of the Americas
   New York, New York 10019

2. CBS Inc.
   51 West 52nd Street
   New York, New York 10019

3. Mutual Broadcasting System, Inc.
   1755 South Jefferson Davis Highway
   Arlington, Virginia 22202

4. National Broadcasting Company, Inc.
   30 Rockefeller Plaza
   New York, New York 10020

B. The National Association of Broadcasters, an industry group formed by the broadcasters themselves, is located at 1771 N Street, N. W., Washington, D. C. 20036. The NAB has established programming and advertising codes for the industry, and can provide information upon request regarding its radio and television codes. Membership in the Association and subscription to its codes are voluntary on the part of each licensee.

C. Canadian and Mexican Stations. Complaints and inquiries concerning stations in Canada should be addressed to The Canadian Radio and Television Commission, Berger Building, 100 Metcalfe Street, Ottawa 4, Canada; for Mexican stations, the regulating official is the Director General of Telecommunications, Department of Frequencies, Office of Assignments, Mexico 12, D.F.

D. Noncommercial industry groups and associations include the following:

Association of Public Radio Stations
1730 Pennsylvania Avenue, N. W.
Washington, D. C. 20006

Corporation for Public Broadcasting
888 - 16th Street, N. W.
Washington, D. C. 20006

National Association of Educational Broadcasters
1346 Connecticut Avenue, N. W.
Washington, D. C. 20036

National Public Radio (NPR)
2025 M Street, N. W.
Washington, D. C. 20036
(Radio program distributor to educational stations)

Public Broadcasting Service (PBS)
475 L'Enfant Plaza West, S.W.
Washington, D. C. 20024
(Television program distributor to educational stations)

(cont'd)

E. Broadcasting Yearbook. Annual guide/directory to broadcasting facilities, services, organizations. It may be purchased from Broadcasting Publications, Inc., 1735 DeSales Street, N. W., Washington, D. C. 20036. Includes, among other things: directories of radio and tv stations licensed by U.S. and Canada (power, frequency, studio location, name and address of licensee, type of entertainment format, etc.); lists of Mexican and Caribbean stations; market data; basic history, nature and regulation of broadcasting; selected FCC rules; NAB codes. Other directories include associations and unions, advertising and talent agencies, communications law and consulting firms, media brokers, networks, news organizations, FCC staff, music licensing groups, producers of commercials and programs, manufacturers and distributors, misc. services, etc., etc.

F. Television Factbook published annually by Television Digest, Inc., and may be purchased by writing to the publisher at 2025 Eye Street, N. W., Washington, D. C. 20006. This publication is designed to provide information for broadcasters and advertisers, and is devoted exclusively to television broadcasting stations and activities.

Selected Commission Publications Available Upon Request

(To obtain a desired item, please address the particular office or branch listed below, identify the subject and supply the full title and date or publication number)

G. Address the Public Information Office, Federal Communications Commission, Washington, D. C. 20554 for a copy of: (1) Fairness Doctrine and Public Interest Standards--Handling of Public Issues (July, 1974). . . .(2) The several publications on ascertainment of community problems by commercial broadcast applicants. . . . . .(3) Ascertainment of Community Problems by Noncommercial Educational Broadcast Applicants, Permittees, and Licensees (March, 1976). . . .(4) Public and Broadcasting; Revised Edition--Procedure Manual (September, 1974). . . .(5) Children's Television Programs--Report and Policy Statement (October, 1974).

H. The Political Broadcasting Primer consists of several publications, and requests for a set of it should be made to the Fairness/Political Broadcasting Branch, Complaints and Compliance Division, Broadcast Bureau, FCC, Washington, D. C. 20554.

J. For a copy of any of the following publications, please address: Complaints Branch, Complaints and Compliance Division, Broadcast Bureau, FCC, Washington, D. C. 20554: (1) Publication 8310-20 on law, FCC policy and complaint procedures regarding employment discrimination in broadcasting. . . .(2) Report [to the Congress] On the Broadcast of Violent, Indecent and Obscene Material (February 19, 1975). . . .(3) The Report under (2) above is conveniently summarized in the News Release of February 19, 1975, "FCC Issues Report on Violence and Obscenity on Television."

GPO 911-941

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